

These are the tentative rulings for civil law and motion matters set for Tuesday, July 29, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, July 28, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY **THE HONORABLE EUGENE S. GINI** AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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**1. M-CV-0057397 Thunderbolt Holdings Ltd, LLC vs. Morris, Thomas W.**

The motion to substitute party is dropped. No moving papers were filed.

**2. M-CV-0059129 Cal. Casualty Indemnity Exchange vs. Frey, Kevin Duane**

Defendant Kevin Duane Frey's ("Frey's") Motion to Compel Compliance With Demand for Production of Documents, Set One, and Motion to Compel Compliance With Form Interrogatories, Set One, is granted in part, and denied in part.

Frey's motion is denied with respect to Request for Production Nos. 1 and 2. In response to Request for Production No. 1, plaintiff states that it is not in possession of the requested item. This is a permissible response pursuant to the Code of Civil Procedure. Frey provides no authority for his assertion that amended responses are required simply due to plaintiff's statement that discovery is continuing. In response to Request for Production No. 2, plaintiff states that it will produce all requested documents in its possession. This is also a permissible response. No further response is required.

Frey's motion is granted with respect to Request for Production No. 3. Plaintiff's response states that all requested documents will be produced, but Frey asserts that no photographs were in fact produced. If no responsive documents are in plaintiff's possession, the current response is inappropriate, and should be amended to state that no such documents are in plaintiff's possession, custody or control.

Frey's motion is granted with respect to Form Interrogatory Nos. 112.1, 112.2, 112.3, 112.4, 112.5, 115.1 and 115.2. Plaintiff's responses to these interrogatories are either not full and complete in and of themselves, or missing.

Plaintiff shall serve amended responses to Request for Production No. 3 and Form Interrogatory Nos. 112.1, 112.2, 112.3, 112.4, 112.5, 115.1 and 115.2 by no later than August 22, 2014.

Frey's request for sanctions is denied. As a preliminary matter, the notice of motion fails to identify every person, party, and/or attorney against whom the sanction is sought, and fails to cite the appropriate legal authority for the request for sanctions. Code Civ. Proc. § 2023.040; Local Rule 20.2.4(E). Further, the motion is unopposed. Code Civ. Proc. § 2031.300(c). Although California Rules of Court, rule 3.1348(a) purports to authorize sanctions if a motion is unopposed, the court declines to do so, as the specific statute governing this discovery authorizes sanctions only if the motion was unsuccessfully made or opposed. Any order imposing sanctions under the California Rules of Court must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v. Firmaterr Inc.* (1997) 60 Cal.App.4th 352, 355.

**3. M-CV-0060245 Portfolio Recovery Associates, LLC vs. Damitz, Chere**

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard on July 29, 2014 at 8:30 a.m. in Department 42.

Plaintiff's Motion for Order That Matters in Request for Admission of Truth of Facts be Admitted is denied.

Plaintiff's motion was set on shortened time by ex parte order dated July 10, 2014. The ex parte order ordered plaintiff to file and serve all moving papers by July 11, 2014. However, plaintiff's motion was not served until July 14, 2014, and the motion was not filed with the court until July 24, 2014. As plaintiff failed to comply with the court's ex parte order with respect to service or filing, the motion is denied.

**4. M-CV-0060786 Secretary of Housing/Urban Dev. vs. Harris, Chris**

Appearance required on July 29, 2014 at 8:30 a.m. in Department 40.

**5. M-CV-0061732 Bieniek, Tonia vs. Gogna, Thomas, et al**

Appearance required on July 29, 2014 at 8:30 a.m. in Department 40.

**6. S-CV-0027264 JB Development, LLC vs. Brelle West Const. Mgmt., et al**

Defendant Roman Garcia, Jr. dba Cornerstone Construction's Motion for Determination of Good Faith Settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range

of the settling party's proportionate share of liability for plaintiff's injuries, and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

**7. S-CV-0027875 Trujillo, Rudy, et al vs. Tri City Storage LLC, et al**

The motion for attorneys' fees is continued to September 16, 2014 at 8:30 a.m. to be heard by the Honorable James D. Garbolino.

**8. S-CV-0030541 Nersesyan, Svetlana vs. Bank of America, N.A.**

This tentative ruling is issued by the Honorable Mark S. Curry.

Appearance is required on July 29, 2014 at 8:30 a.m. in Department 32 for the continued hearing on appeal after remittitur, defendants' Motion to Dismiss Entire Action With Prejudice, and plaintiff's Motion for Leave to Amend.

Plaintiff's request for telephonic appearance is granted. All telephonic appearances are governed by Local Rule 20.8.

**9. S-CV-0031091 Secret Ravine Development Co., LLC vs. Sierra View Co., Inc.**

The motion for determination of good faith settlement is continued to August 5, 2014 at 8:30 a.m. in Department 40.

**10. S-CV-0031533 Coppedge, Steven vs. Vericrest Financial, Inc., et al**

The motions for summary judgment are dropped. No moving papers were filed.

**11. S-CV-0032451 Pride Acquisitions LLC vs. Tron, Alma E.**

The motion to substitute party is dropped. No moving papers were filed.

**12. S-CV-0032543 Kennedy, William vs. Chinquapin Homeowners Association**

This tentative ruling is issued by the Honorable Mark S. Curry.

**Defendant Chinquapin Homeowners Association's Motion for Attorney's Fees Pursuant to Civil Code Section 5975 is continued to August 19, 2014 at 8:30 a.m. in Department 32.**

The starting point for a determination of hours reasonably spent is the attorney's time records. *Horsford v. Board of Trustees of Cal. State Univ.* (2005) 132 Cal.App.4th 359, 395-397. Although defendant is not required to provide billing time sheets to support its award of attorneys' fees, defendant must provide sufficiently detailed information to permit the court to assess whether the number of hours worked on each task was reasonable. In this case, defendant has set forth an overly general chart in its moving papers which is neither sufficiently detailed,

nor supported by declaration. Neither plaintiff nor the court can fairly evaluate a request for \$91,605 in attorneys' fees for approximately 545 hours of work based on the information that has been provided. As just one example, defendant claims to have spent nearly 50 hours on "misc. matters". Defendant provides nothing to support a finding that such fees are reasonable.

Defendant shall file and serve a supplemental declaration in support of its motion, which either includes the subject billing statements (which may have any privileged information redacted), or a detailed summary of the number of hours expended by each attorney on each discrete task, by no later than August 6, 2014. Plaintiff may file and serve a supplemental reply by no later than August 12, 2014.

**13. S-CV-0033078 GSMS 2005-GG4 Menlo Office, LP vs. STSW Capital, LLC**

The motion to approve receiver's final account is continued to August 5, 2014 at 8:30 a.m. in Department 40.

**14. S-CV-0033227 Scott, Janet vs. Crossmark, Inc., et al**

The motion for protective order was dropped at the request of the moving party.

**15. S-CV-0033228 Vogelsang, Janice vs. Crossmark, Inc., et al**

The motion for protective order was dropped at the request of the moving party.

**16. S-CV-0033229 Bechtold, Diane vs. Crossmark, Inc., et al**

The motion for protective order was dropped at the request of the moving party.

**17. S-CV-0033230 Crooke, John vs. Crossmark, Inc., et al**

The motion for protective order was dropped at the request of the moving party.

**18. S-CV-0033467 Wells Fargo Bank, NA vs. Beer Family Enterprises, LP, et al**

The motion for attorneys' fees is continued to August 5, 2014 at 8:30 a.m. in Department 40.

**19. S-CV-0033527 Alizadeh, Abolghassem, et al vs. Unionbancal Mortgage, et al**

This tentative ruling is issued by the Honorable Mark S. Curry. If oral argument is requested, it shall be heard on July 29, 2014 at 8:30 a.m. in Department 32.

As a preliminary matter, the court notes that on July 24, 2014, plaintiffs filed an objection to the commissioner hearing motions scheduled for July 29, 2014. Local Rule 20.2(B) requires that any notice of non-stipulation to the commissioner must be filed at least five court days prior to the hearing date for the motion. The failure to timely file such notice is deemed a stipulation

to the commissioner for all purposes other than trial. As plaintiffs' objection was not timely filed, it is ineffective.

### Motion to Expunge Lis Pendens

Defendant Union Bank, N.A.'s ("Union Bank's") request for judicial notice is granted.

Defendant Union Bank's Motion to Expunge Lis Pendens is granted.

A lis pendens may be expunged as improper if the court finds that the complaint does not contain a "real property claim", or plaintiff cannot establish its "probable validity" by a "preponderance of the evidence". Code Civ. Proc. §§ 405.31, 405.32. A "real property claim" includes a cause of action which would, if meritorious, affect title to, or the right to possession of, specific real property. Code Civ. Proc. § 405.4. In this case, the first amended complaint asserts certain real property claims, including quiet title, cancellation of instruments, and to set aside trustee's sale. However, plaintiffs fail to establish the probable validity of such claims by a preponderance of the evidence.

Plaintiffs' opposition is supported by the declaration of plaintiff Abolghassem Alizadeh ("Alizadeh"). Alizadeh states that he engaged in discussions with Union Bank between 2009-2011 in an effort to save certain properties, including the property that is the subject of this motion, from foreclosure. Alizadeh states that in September 2011, a Union Bank representative informed him that if he reinstated or paid off his loans, Union Bank would not hold any claims against him. Alizadeh claims that Union Bank, through its representative Joseph Rosa, represented that if Alizadeh signed forbearance agreements, "made a down payment of \$100,000, and then made three monthly payments", Union Bank would "reinstate and modify the loans", and then cancel the forbearance agreements. Alizadeh states that he performed his obligations based on Union Bank's promise, then learned in January 2012 that "Union Bank had no intention of reinstating or modifying the loans". Alizadeh then admits that he stopped making payments relating to the properties, and the properties were sold through foreclosure.

Plaintiffs' burden is to show by a preponderance of the evidence that their claims are probably valid. Plaintiffs fail to meet this burden. Alizadeh admits that he defaulted on his loan obligations with respect to the subject property. Accordingly, Union Bank was entitled under the loan documents to initiate foreclosure proceedings, which occurred in October and November 2012. Alizadeh does not argue that he either reinstated or paid off the subject loan. Alizadeh provides no evidence to support his assertion that Union Bank reneged on its promises to him, and admits that he intentionally stopped making any payments relating to the subject property after January 2012. The alleged promises by Union Bank are vague, and unsupported by any written documentation. Alizadeh provides neither written correspondence between himself and Union Bank which establishes the purported agreement, nor any other documentary evidence to support his claim. Given the stark lack of detail regarding the purported promise upon which he relied, it is unclear how the court could enforce such an agreement, and Alizadeh's admission that he intentionally made no payments on his loan after January 2012 undermines each of his real property claims. Further, for the equitable relief sought by plaintiffs, plaintiffs are first required to do equity, by tendering the full amount of the indebtedness.

Additionally, the lis pendens recorded by plaintiffs is procedurally deficient. First, the lis pendens was not served by registered or certified mail, as required by Code of Civil Procedure section 405.22. Accordingly, it is void and invalid pursuant to Code of Civil Procedure section 405.23. Second, a lis pendens was previously recorded by plaintiff with respect to this property in a prior action, and that lis pendens was expunged. "Once a notice of pending action has been expunged, the claimant may not record another notice of pending action as to the affected property without leave of the court in which the action is pending." Code Civ. Proc. § 405.36. Plaintiffs failed to obtain leave of court prior to filing this second lis pendens relating to the subject property. For this additional reason, the motion should be granted.

Union Bank's request for attorneys' fees is denied, as the notice of motion fails to request such relief. A notice of motion "shall state in the opening paragraph the nature of the order being sought and the grounds for issuance of the order." (Cal. R. Ct., rule 311(a).) Union Bank may seek such fees by separately noticed motion.

#### Demurrer to First Amended Complaint

In light of defendant Union Bank's objections to the late filing and service of plaintiffs' opposition, the Demurrer to First Amended Complaint is continued to August 12, 2014 at 8:30 a.m. in Department 40. Union Bank may file and serve any reply to plaintiffs' opposition by August 5, 2014.

#### **20. S-CV-0033965 Wilson, Susan K. vs. Maznik, Ivan**

Defendants' Motion to Compel Further Responses to Request for Identification and Production of Documents and Other Tangible Things, Set One is granted.

Plaintiff's "Response to Request for Identification and Production of Documents" is deficient as it fails to comply with the applicable provisions of the Code of Civil Procedure. Specifically, plaintiff failed to respond separately to each item in the demand with an agreement to comply, representation of inability to comply, or objection. Code Civ. Proc. §§ 2031.010, 2031.210, 2031.220.

Plaintiff has also failed to comply with the request by producing responsive documents. Defendants are entitled to production of the documents which form the basis for the Excel spreadsheet that has been provided. Plaintiff has agreed to make the documents available, but insists that defendant bear the cost of the actual production. However, as the cost of copying the documents in response to defendant's request is a reasonable and typical expense involved in responding to a discovery request, plaintiff should bear this cost. *See San Diego Unified Port Dist. v. Douglas E. Barnhart, Inc.* (2002) 1400, 1404-1405; *Toshiba Am. Electronic Components, Inc. v. Superior Court* (2004) 124 Cal.App.4th 762, 769.

Plaintiff shall serve an amended verified response to the request for production of documents in compliance with the Code of Civil Procedure, and copies of documents responsive to the request for production of documents, by no later than August 15, 2014.

Although plaintiff's response to defendants' motion is titled "Non-Opposition to Motion to Compel", it is clear that plaintiff continues to oppose defendant's position that plaintiff bear the cost of production. As plaintiff has, to that extent, unsuccessfully opposed the motion, sanctions are appropriate. Defendants are awarded sanctions in the amount of \$330 from plaintiff and her counsel, jointly and severally. Code Civ. Proc. § 2031.300(c).

**21. S-CV-0034283 Cotter, Kevin vs. Buchner, Willie, et al**

Defendant's Special Motion to Strike

Defendant Willie Buchner's Special Motion to Strike is granted.

As a preliminary matter, plaintiff Kevin Cotter previously objected to defendant's motion on the grounds that it was untimely as it was not filed within 60 days of service of the complaint. Plaintiff's objection was overruled, and matter was continued to permit plaintiff the opportunity to file an opposition. The court has discretion to consider an untimely motion, and has chosen to exercise that discretion in this case. Code Civ. Proc. § 425.16(f).

Evaluation of an anti-SLAPP motion involves a two-step process. First, the court determines whether the challenged cause of action is one "arising from" protected activity. Code Civ. Proc. § 425.16(b)(1). If such a showing is made, the court then considers whether plaintiff has demonstrated a probability of prevailing on the claim. *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76.

In this action, plaintiff asserts a single cause of action against defendant for malicious prosecution. A claim for malicious prosecution is susceptible to an anti-SLAPP motion. *Jarrow Formulas, Inc. v. LeMarche* (2003) 31 Cal.4th 728, 741. Thus the court proceeds to the second prong of the analysis, whether plaintiff has demonstrated a probability of prevailing.

Plaintiff's cause of action for malicious prosecution arises from defendant's filing of a verified petition for civil harassment restraining orders against plaintiff on June 10, 2013. (Complaint, ¶ 9.) A temporary restraining order was issued in that case, but defendant dismissed the petition prior to the hearing on permanent orders. (*Id.*, ¶¶ 9-10.) The unsuccessful filing of a petition for an injunction under Code of Civil Procedure section 527.6 may not form the basis for a malicious prosecution action. *Siam v. Kizilbash* (2005) 130 Cal.App.4th 1563, 1574. As such, plaintiff is unable to establish the probability of prevailing in this action.

Plaintiff argues that *Siam* is distinguishable because it did not involve a dismissal prior to hearing on the merits. This argument is unpersuasive. The *Siam* court based its holding on public policy reasons, noting that section 527.6 authorizes sanctions for frivolous or delaying conduct, that malicious prosecution claims could frustrate the streamlined procedures provided for by the statute, and that the risk of subsequent litigation could dissuade victims of serious harassment from seeking a section 527.6 remedy. *Id.* at 1573. As explained by the *Siam* court, exposing petitioners in section 527.6 proceedings to subsequent malicious prosecution actions would be inconsistent with (i) the Legislature's establishment of a "streamlined procedure" for swiftly resolving claims of unlawful harassment; and (ii) the Supreme Court's insistence in

*Sheldon Appel Co. v. Albert & Olier* (1989) 47 Cal.3d 863, 868, 872, and later cases, that the “disfavored” tort of malicious prosecution should not be expanded beyond established boundaries. *Id.* at 1573-1574. Plaintiff offers no persuasive reasons for ignoring the holding of *Siam*.

Based on the foregoing, defendant’s Special Motion to Strike is granted. Plaintiff’s claim is hereby stricken, and the action is dismissed. Defendant is entitled to an award of reasonable attorneys’ fees and costs incurred in relation to the motion to strike, to be determined by separate noticed motion. Code Civ. Proc. § 425.16(c).

Demurrer to Complaint

In light of the ruling on the Special Motion to Strike, defendant’s Demurrer to Complaint is dropped as moot.

**22. S-CV-0034425 Kosko, Denise vs. Railhead Saloon, et al**

This tentative ruling is issued by the Honorable Mark S. Curry. If oral argument is requested, it shall be heard on July 29, 2014 at 8:30 a.m. in Department 32.

Demurrer to Complaint

Defendant Kita Keen, erroneously sued as Kita Carpenter’s (“Keen’s”) request for judicial notice is granted. Keen’s Demurrer to Complaint is sustained with leave to amend.

Plaintiff’s complaint fails to state a cause of action for either assault and battery or intentional infliction of emotional distress against Keen. For purposes of both causes of action, plaintiff fails to allege any facts which would establish Keen’s purported liability.

Motion to Strike

Keen’s request for judicial notice is granted. Keen’s Motion to Strike is granted with leave to amend.

Plaintiff’s complaint fails to allege facts justifying a request for punitive damages against Keen. Accordingly, any references to punitive damages as stated against Keen are hereby stricken.

Leave to Amend

Plaintiff shall file and serve any amended complaint by no later than August 15, 2014.

**23. S-CV-0034545 Conrad Urata 4, LLC vs. Behehsti, Mehran, et al**

Plaintiff Conrad Urata 4, LLC’s Application for Right to Attach Order and Order for Issuance of Writ of Attachment is granted.



Plaintiff establishes that its claim is one on which an attachment may be issued, the probable validity of such claim, and that attachment is not sought for any purpose other than to secure recovery on the claim. Code Civ. Proc. § 484.090. The amount to be secured is \$93,503.68. As the application is unopposed, defendants have failed to prove that any of the property sought to be attached is exempt from attachment.

Upon the filing of an undertaking in the amount of \$10,000, the clerk shall issue a writ of attachment for the property of the defendants Mehran Behehsti dba Giraffe Restaurant, and Maryam Riazi dba Giraffe Restaurant, as set forth in plaintiff's application, including real property, deposit accounts, safe deposit boxes, and general intangibles.

**24. S-CV-0034571 David, Edgar P., et al vs. Rolling Greens Estates, LLC, et al**

The demurrer to complaint was dropped at the request of the moving party.

**25. S-CV-0034845 Walker, Jamie Carol Lee - In Re the Petition of**

The petition to establish fact, time and place of birth is continued to August 5, 2014 at 8:30 a.m. in Department 40.

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